

Reserved On : 27/05/2026
Pronounced On : 29/05/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION (DIRECTION - TO LODGE
 FIR/COMPLAINT) NO. 7352 of 2026**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✓	
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TOFIK SHAIKH S/O JAHIRUDDIN GYASUDDIN SHAIKH
 Versus
STATE OF GUJARAT & ORS.

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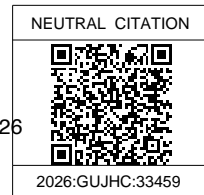
Appearance:
 MR.ROBIN BHATT, ADVOCATE FOR MR. MUSAIB I SHAIKH(10565) for the
 Applicant(s) No. 1
 MR. HARDIK DAVE, PUBLIC PROSECUTOR WITH MS. MAITHILI MEHTA,
 APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT

1. Heard Mr.Robin Bhatt, learned advcoate for Mr. Musaib I. Shaikh, learned advocate for the petitioner and Mr. Hardik Dave, learned Public Prosecutor assisted by Ms. Maithili Mehta, learned Additional Public Prosecution for the respondent - State. Considering the urgency in the matter, the petitioner was heard finally at the admission stage with the consent of the parties.



OUTLINE OF THE PETITION:-

2. The present petition has been preferred by the petitioner under Article 226 of the Constitution of India, seeking issuance of appropriate directions from this Court for registration of an FIR and for conducting a fair, impartial and independent investigation in relation to the alleged custodial assault and custodial death of the petitioner's father, namely late Mr. Jairuddin Gyasuddin Shaikh.

FACTUAL MATRIX

3. The allegations facts germane to the controversy involved are briefly set out below:

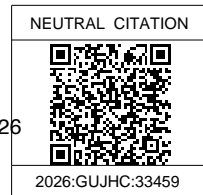
3.1 On 18.05.2026, the deceased, namely Jairuddin Gyasuddin Shaikh, came to be arrested at about 16:30 hours in connection with the offence registered vide C.R. No. 11191028260200/26 with Vejalpur Police Station for the offences punishable under the provisions of the Bharatiya Nyaya Sanhita (BNS), the Gujarat Animal Preservation Act, 1954 and the Prevention of Cruelty to Animals Act, 1960.

3.2 It is the case of the petitioner that during the period



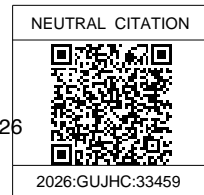
when the deceased was in police custody and/or present within the premises of the concerned police station on 18.05.2026, he was allegedly subjected to physical assault and administered certain unidentified substances. On 19.05.2026, at approximately 12:40 hours, the deceased was taken to Sola Civil Hospital, Ahmedabad for medical treatment. However, owing to the non-availability of a bed in the ICCU/MICU as well as the casualty ward of the said hospital, the attending medical officer advised the relatives of the deceased to shift him to another medical institution. Accordingly, the deceased was referred to Asarwa Civil Hospital, Ahmedabad and was shifted there at about 01:46 hours.

3.3 Thereafter, at about 10:28 hours, the deceased was admitted to Sardar Vallabhbhai Patel Institute of Medical Sciences and Research (SVP Hospital), Ahmedabad, where medico-legal case papers came to be prepared. That after administration of treatment and conducting certain medical tests, the deceased collapsed at about 11:54 hours and was declared dead by the attending doctors at SVP Hospital. Subsequently, an Accidental Death case being A.D. No.18 of 2026 came to be registered at about 18:30 hours.



3.4 On 20.05.2026, since the deceased had expired while in custody, the Officer-in-Charge and Police Inspector of Vejalpur Police Station informed the Sub-Divisional Magistrate, West Zone, Ahmedabad for conducting the inquest proceedings over the dead body of the deceased. Pursuant thereto, an Inquest Panchnama was conducted by the SDM-cum-Deputy Collector, Ahmedabad City (West) between 16:05 hours and 16:40 hours, which proceedings were also video-graphed. On the same day, the Police Inspector, Vejalpur Police Station, informed the learned Chief Judicial Magistrate, Ahmedabad Rural, Mirzapur regarding the death of the deceased while in custody.

3.5 It is the case of the petitioner that the medico-legal case papers record that the incident had occurred at Vejalpur Police Station and also contain an endorsement stating "Ask for Postmortem". According to the petitioner, the said material disclosed commission of a cognizable offence warranting registration of an FIR and an independent investigation.

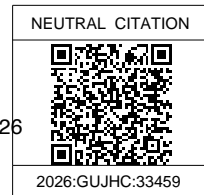


3.6 On 20.05.2026, the postmortem examination of the deceased was conducted by a panel of five doctors attached to the Department of Forensic Medicine, B.J. Medical College, Ahmedabad, between 18:05 hours and 19:30 hours. On the same day, the statement of the petitioner was recorded by the PSI, Vejalpur Police Station in connection with the inquiry relating to A.D. No.18 of 2026. Subsequently, the investigation of the said accidental death case was transferred to the ACP, 'M' Division, Ahmedabad City, who took over the investigation on the very same day.

3.7 During the period from 20.05.2026 to 22.05.2026, the ACP in charge of the investigation recorded statements of various police officials, collected medical documents and certificates from Sola Civil Hospital, Asarwa Civil Hospital and SVP Hospital, drew a panchnama of the place of occurrence and seized CCTV footage of the police station.

PRAYERS AND RELIEFS SOUGHT

4. It is the case of the petitioner that, notwithstanding the allegations pertaining to custodial violence and custodial



death, no FIR has been registered against the concerned persons and/or police officials till date. Being aggrieved thereby, on 21.05.2026, the petitioner has preferred the present petition under Article 226 of the Constitution of India, inter alia, seeking the following prayers:-

“(A) Admit and allow the present petition.

(B) Your Lordships be pleased to Issue a writ of Mandamus or any other appropriate writ, order or direction directing the respondent authorities to forthwith register FIR in connection with custodial assault and custodial death of Jahiruddin Gyasuddin Shaikh on the basis of complaint and MLC papers;

(C) Your Lordships be pleased to Direct that investigation be carried out by an independent agency and/or by an officer not below the rank of ACP/DCP so as to ensure fair, impartial and transparent investigation;

(D) Your Lordships be pleased to Pending admission, hearing and final disposal of the present petition, direct respondent authorities to preserve CCTV footage, station diary entries, medical papers, call records and all other evidence pertaining to the incident;

(E) Pass such other and further order(s) as may be deemed fit and proper in the interest of justice.”

ARGUMENTS OF THE PETITIONER :-

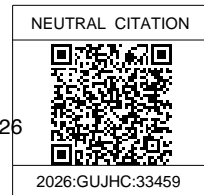
5. Mr. Robin Bhatt, learned advocate appearing for the petitioner, has submitted that despite grave allegations pertaining to custodial violence and custodial death, no FIR has been registered against the concerned police officials till date. It was submitted that the family of the deceased had initially lodged a complaint before the officer in-charge at the



Hospital. Thereafter, upon failure of the authorities to register the FIR, the petitioner approached the Police Commissioner on the following day; however, no action was taken on the complaint. Mr. Bhatt, learned advocate, has further submitted that, during the interregnum, substantial pressure was allegedly exerted upon the family members of the deceased to arrive at a settlement in the matter.

5.1 Mr. Bhatt, learned advocate, has further submitted that the Criminal Miscellaneous Application preferred by the petitioner later on, clearly reflects, particularly at Page No. '6' thereof, that a complaint had already been addressed to the Police Commissioner. It was contended that such action sufficiently satisfies the requirement contemplated under Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Mr. Bhatt, learned advocate has submitted that merely because the petitioner has availed one of the statutory remedies available under law, the same does not preclude or disentitle the petitioner from invoking the extraordinary writ jurisdiction of this Court at any stage.

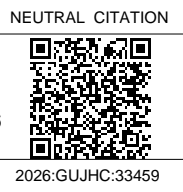
5.2 Mr. Bhatt, learned advocate, has placed reliance upon



the decision of the Hon'ble Apex Court in ***Lalita Kumari v. Government of Uttar Pradesh and Others***, reported in ***2014 (2) SCC 1***, wherein it was categorically held that registration of an FIR under Section 154 of the Code of Criminal Procedure (Section 173 of the BNSS) is mandatory where the information discloses commission of a cognizable offence. It was also submitted that the Hon'ble Apex Court further observed that a preliminary inquiry is permissible only in limited categories of cases and cannot be resorted to for avoiding registration of an FIR. It is therefore contended that, in the present case, the allegations prima facie disclose cognizable offences, and consequently, the concerned authorities were under a statutory obligation to register the FIR forthwith.

5.3 The Hon'ble Apex Court in the case of ***Lalita Kumari (Supra)***, has held as under:-

"119. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the



information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

120. In view of the aforesaid discussion, we hold:

120.1 *Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

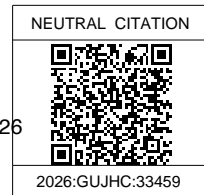
120.2 *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

120.3 *If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*

120.4 *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

120.5 *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

120.6 *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and*



circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

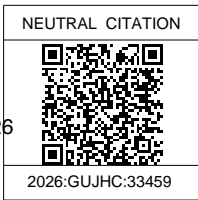
- (a) Matrimonial disputes/ family disputes*
- (b) Commercial offences*
- (c) Medical negligence cases*
- (d) Corruption cases*
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7 While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8 Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

5.4 Mr. Bhatt, learned advocate, has further placed reliance upon the decision of the Hon'ble Apex Court in ***Smt. Nilabati Behera Alias Lalit Behera v. State of Orissa & Ors.***, reported in ***1993 (2) SCC 746***, wherein the Court held that custodial violence and deaths in police custody constitute a direct infringement of the fundamental rights guaranteed under Article 21 of the Constitution of India. The Hon'ble Apex Court observed that the State bears strict responsibility



for protecting the life and liberty of persons in custody and cannot evade accountability for violations committed by its officials. Relying upon the said principles, it is contended that allegations of custodial death warrant immediate, fair and independent investigation so as to uphold the constitutional guarantee of protection of life and personal liberty.

5.5 It has further been submitted that the inaction on the part of the respondent authorities in failing to register the FIR is wholly arbitrary, mala fide, illegal and violative of the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. It was submitted that since the allegations pertain to acts allegedly committed within police custody and inside the premises of the police station itself, there exists a reasonable apprehension that the local police machinery may not conduct a free, fair and impartial investigation. It was further contended that there is every likelihood of material evidence being tampered with or destroyed. According to the petitioner, unless this Court intervenes and issues appropriate directions for registration of the FIR and for an independent investigation, grave miscarriage of justice would ensue and the true circumstances

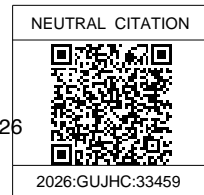


surrounding the death of the deceased may never come to light.

ARGUMENTS OF THE RESPONDENTS :-

6. Mr. Hardik Dave, learned Public Prosecutor, assisted by Ms. Maithili Mehta, learned Additional Public Prosecutor, appearing for the respondent - State, has opposed the present application by contending that the petition was affirmed on 21.05.2026, whereas no complaint or representation had been submitted before the police authorities on the said date. It was submitted that the complaint came to be lodged only on 22.05.2026 and, therefore, at the time of filing of the present proceedings, no cause of action had arisen against the authorities on account of alleged inaction in registration of the FIR. According to the respondent - State, the conduct of the applicant demonstrates a predetermined intention to invoke the extraordinary jurisdiction of this Court without first availing the remedies available under law.

6.1 Mr. Dave, learned Public Prosecutor, has further taken the Court through the statutory mechanism prescribed under the BNSS to understand the 'appropriate forum' in this



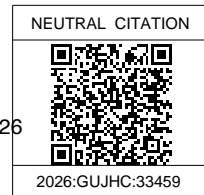
matter, which mandates that information relating to a cognizable offence must first be placed before the officer in-charge of the concerned police station under Section 173(1) of the BNSS. In the event of refusal to register the FIR, the aggrieved person has an alternative remedy of approaching the higher police authority under Section 173(4) of the BNSS and thereafter the jurisdictional Magistrate under Section 175(3) of the BNSS. Mr. Dave, learned Public Prosecutor submitted that, apart from submitting a complaint before the police station, the applicant has not availed any of the subsequent statutory remedies available under the BNSS. It was therefore contended that the present writ petition is not maintainable in view of the existence of efficacious alternative statutory remedies.

6.2 Mr. Dave, learned Public Prosecutor submitted that the reliance placed by the petitioner upon the decision in **Lalita Kumari (Supra)** is misconceived. It was contended that while the said judgment mandates registration of an FIR upon disclosure of a cognizable offence, it does not dispense with or override the statutory remedies available under the BNSS in cases of non-registration. Since the petitioner has not



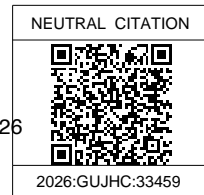
exhausted the alternative remedies prescribed under the statute, the present writ petition is not maintainable.

6.3 Mr. Dave, learned Public Prosecutor further submitted that the issue regarding invocation of writ jurisdiction under Article 226 of the Constitution for seeking directions to register an FIR in cases of alleged police inaction has been comprehensively considered by the Hon'ble Apex Court in ***M. Subramaniam and Another v. S. Janaki and Another***, reported in **(2020) 16 SCC 728**. Reliance was placed upon the earlier decision in ***Sakiri Vasu v. State of Uttar Pradesh***, reported in **(2008) 2 SCC 409**, wherein the Hon'ble Apex Court emphasized that an aggrieved person must avail the statutory remedies provided under criminal law before approaching the High Court. It was submitted that the Hon'ble Apex Court, in the aforesaid decisions, set aside directions issued by the High Court for registration of FIRs. Similar reliance was placed on ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage***, reported in **(2016) 6 SCC 277**, wherein comparable directions issued by the High Court were also quashed.



6.4 Mr. Dave, learned Public Prosecutor, further relied upon the decision in ***Radhakrishna Industries v. State of Himachal Pradesh***, reported in **(2021) 6 SCC 771**, wherein the Hon'ble Apex Court recognized that writ jurisdiction under Article 226 may be exercised in exceptional circumstances, such as enforcement of fundamental rights, violation of principles of natural justice, or lack of jurisdiction. However, it was submitted that the Hon'ble Apex Court has clarified that petitions seeking directions for registration of FIRs ordinarily ought not to be entertained directly under Article 226, as doing so would make the High Court a forum of first instance and bypass the statutory mechanism prescribed under criminal law. Accordingly, the exceptions noted in ***Radhakrishna Industries (Supra)*** were stated to be inapplicable to the present case.

6.5 Mr. Dave, learned Public Prosecutor, further placed reliance upon the judgment rendered by this Court in ***Vishal Pradeepbhai Thakker v. State of Gujarat & Ors.***, reported in **2025:GUJHC:55543**, wherein the issue relating to registration of FIR in cases involving custodial death was examined. It was submitted that, after considering the



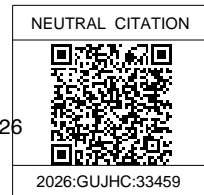
precedents cited therein and the material available on record, this Court had concluded that the applicant had directly invoked the writ jurisdiction of the High Court without first availing the remedy before the jurisdictional Magistrate as contemplated under the statutory framework. In **Vishal Pradeepbhai Thakker (Supra)**, this Court has held as under:-

*"5) While referring to the judgment of **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage & Ors.** reported in (2016)6 SCC 277 and **M. Subramaniam vs. S. Janki** reported in (2020)16 SCC 728, it is observed that if the High Courts entertain such writ petitions seeking registration of FIR, then they will be flooded with such writ petitions and will not be able to do any other work, except dealing with them. It is specifically held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under section 175(3) of the BNSS [section 156(3) of CrPC] and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the FIR and also ensure a proper investigation in the matter. While approving the aforementioned view, the Supreme Court has set aside the direction of the High Court for registration of the FIR and has directed the respondent thereto to approach the court of Magistrate if deem appropriate and necessary. Thus, the law on the registration of FIR is well settled and has been reiterated in the recent judgment of the Supreme Court as noted herein above.*

6) In the present case, the petitioner has not approached the concerned Magistrate and has directly approached this Court for the aforesaid prayer.

7) Under the circumstances and in light of the observations made by the Apex Court, the writ petition is rejected since the petitioner has the remedy to approach the concerned Magistrate under section 175(3) of the BNSS [section 156(3) of CrPC].

8) It is noticed by this Court that various petitions seeking



registration of FIR are being filed before this Court directly without approaching the concerned Magistrate under Section 175(3) of the BNSS [section 156(3) of CrPC]. Such applications which are directly filed are in direct conflict with the observations of the Apex Court. The Apex Court has expressed its concern with regard to filing of such applications/petitions directly before the High Court since filing of such petitions/applications are an unnecessary burden.”

6.6 Mr. Dave, learned Public Prosecutor, further submitted that the authorities have duly complied with the statutory requirements under Section 196 of the BNSS as well as the directions issued by the Hon’ble Apex Court in cases of custodial death. It was submitted that intimation was immediately given to the learned Judicial Magistrate, the National Human Rights Commission, and the concerned SDM, pursuant to which inquest proceedings and postmortem examination by a panel of doctors were conducted and video-graphed. It was further contended that the deceased had informed doctors at two hospitals that he had consumed a large quantity of medicines for blood pressure, diabetes, and thyroid ailments, thereby negating allegations of custodial violence. The respondent-State alleged that the petitioner had approached this Court prematurely, without availing statutory remedies, with an intention to exert pressure upon the authorities.



FINDINGS AND ANALYSIS:-

7. Custodial death, undoubtedly is a heinous crime. It is not just that a person has died, but the death has occurred at a place or due to the said deceased person's physical presence being in a place where such person ought to have felt as safe as possible in society. It is also a matter of fact that whenever the allegations of custodial death have been raised in society, the same have been met by denial and reluctance on the part of the authority, who in the first place, was supposed to protect the deceased. In Nilabati Behera reported in (1993) 2 SCC 746, the Hon'ble Apex Court has observed as under:-

“Considering, that it was alleged to be a case of custodial death, at the hands of those who are supposed to protect the life and liberty of the citizen, and which if established was enough to lower the flag of civilization to fly half-mast, the report of the District Judge was scrutinized and analysed by us with the assistance of Mr. M.S. Ganesh, appearing amicus curiae for the Supreme Court Legal Aid Committee and Mr. Altaf Ahmad, the learned Additional Solicitor General carefully.

Verma J., while dealing with the first question i.e. whether it was a case of custodial death, has referred to the evidence and the circumstances of the case as also the stand taken by the State about the manner in which injuries were caused and has come to the conclusion that the case put up by the police of the alleged escape of Suman Behera from police

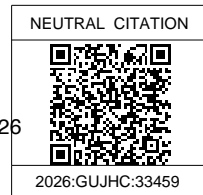


custody and his sustaining the injuries in a train accident was not acceptable. I respectfully agree. A strenuous effort was made by the learned Additional Solicitor General by reference to the injuries on the head and the face of the deceased to urge that those injuries could not be possible by the alleged police torture and the finding recorded by the District Judge in his report to the contrary was erroneous. It was urged on behalf of the State that the medical evidence did establish that the injuries had been caused to the deceased by lathi blows but it was asserted that the nature of injuries on the face and left temporal region could not have been caused by the lathis and, therefore, the death had occurred in the manner suggested by the police in a train accident and that it was not caused by the police while the deceased was in their custody. In this connection, it would suffice to notice that the Doctor, who conducted the postmortem examination, excluded the possibility of the injuries to Suman Behera being caused in a train accident. The injuries on the face and the left temporal region were found to be post-mortem injuries while the rest were ante-mortem. This aspect of the medical evidence would go to show that after inflicting other injuries, which resulted in the death of Suman Behera, the police with a view to cover up their crime threw the body on the rail-track and the injuries on the face and left temporal region were received by the deceased after he had died. This aspect further exposes not only the barbaric attitude of the police but also its crude attempt to fabricate false clues and create false evidence with a view to screen its offence. The falsity of the claim of escape stands also exposed by the report from the Regional Forensic Science Laboratory dated 11.3.1988 (Annexure R-8) which mentions that the two pieces of rope sent for examination to it, did not tally in respect of physical appearance, thereby belying the police case that the deceased escaped from the police custody by chewing the rope. The theory of escape has, thus, been rightly disbelieved and I agree with the view of Brother Verma J. that the death of Suman Behera was caused while he was in custody of the police by police torture. A custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. It is not our concern at this stage, however, to determine as to which police officer or officers were responsible for the torture and ultimately the death of Suman Behera. That is a matter which shall have to be decided by the competent court. I respectfully agree with the directions given to the State by Brother Verma, J. in this behalf. On basis of the above conclusion, we have now to examine



whether to seek the right of redressal under [Article 32](#) of the Constitution, which is without prejudice to any other action with respect to the same matter which way be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress by awarding monetary damages for the infraction of the right to life. It is exiomatic that convicts, prisoners or under-trials are not denuded of their fundamental rights under [Article 21](#) and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by [Article 21](#) of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either."

8. Therefore, if the allegations levelled in the petition, are taken at face value, the instant case brings a situation before this Court, where, despite the custodians of personal liberty being themselves accused of gross violation of the same and violence against members of the society, they were supposed



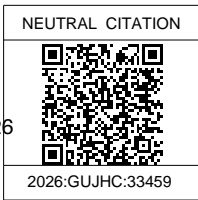
to protect, the question before this Court is, whether, due to such inaction on the part of the police authorities to acknowledge the problem and register an FIR against their own ilk, the writ jurisdiction of this Court can be activated by the next friend/kin of an alleged victim to implement the mandate of the Hon'ble Apex Court in Lalita Kumari (Supra). Several decisions of the Hon'ble Apex Court have been referred to and relied upon by Mr. Dave, learned Public Prosecutor. The line of the aforesaid decisions, culminating in Attavar's case are to the effect that once, for whatever reason, despite the disclosure of a cognizable offence, in the information provided by the informant to the police authorities, the police refuse to lodge an FIR following the mandate of Lalita Kumari (Supra), there is no mechanism provided in Lalita Kumari. There is no mandate in Lalita Kumari(Supra) or in any other judgment of the Hon'ble Apex Court by which, on the failure to lodge an FIR, a potential victim/next of kin can approach a High Court directly under Article 226 of the Constitution of India. Instead, the procedure prescribed under the Cr.P.C/(now B.N.S.S.) is the statutory remedy provided by Parliament. In fact, as held in Subramanyam (Supra), not only should a writ Court not



interfere unless it can be shown that the petitioner has exhausted his statutory remedy, but there are instances where upon such interference, the decision of the Hon'ble High Court has been quashed and set aside by the Apex Court.

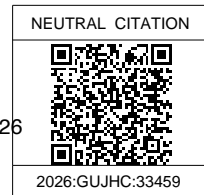
9. Now, as far as custodial death is concerned, the only issue is whether this Court can make an exception to the well settled position as projected in the decisions of the Hon'ble Apex Court (Supra) and direct the registration of an FIR by holding that because it is a case of custodial death, therefore directing the petitioner to approach firstly the Commissioner of Police and thereafter, the Magistrate in question would be an illusory remedy and hence, not an efficacious and therefore, alternate remedy, inasmuch as, both the Commissioner of Police as well as the learned Magistrate would be expected to be partisan and biased and therefore, will not be expected in law to perform their statutory obligations.

10. Even if I hold that the Commissioner of Police may be biased and would not be inclined to register an FIR which would tarnish the image of his/her own department, I cannot automatically include the Magistrate to whom an appeal from



the decision of the Commissioner of Police would lie, in the same bracket.

11. Although none of the decisions of the Hon'ble Apex Court, relying upon Sakiri Vasu (Supra) have considered the said aspect in as many words or have considered the strain put upon the statutory remedy by the event of a custodial death, that by itself does not persuade me to carve out a "custodial death" as an exception to the statutory process envisaged to redress a situation where Lalita Kumari(Supra) is not followed in letter and spirit. While it is also true that Lalita Kumari not only mandates the law within the meaning of Article 141 of the Constitution of India, but it also mandates, under Article 144 of the Constitution of India, that every civil or other authority, acting in aid of the Hon'ble Supreme Court shall follow the mandate of Lalita Kumari (Supra) to register an FIR in a cognizable offence disclosed on the face of the allegations of the proposed informant. The fear and the mischief is to the effect that the moment there is an allegation against the police authorities which is brought before the police authorities, instead of registering an FIR which would lend credence to the version of the informant, the police authorities would simply investigate whatever else



and in whatever manner it would choose, to stifle the inconvenient truth.

12. On such a premise, I would have ordinarily thought that the most natural and effective remedy would have been a writ petition to implement the directions of Lalita Kumari. However, I find that there is a catena of decisions of the Hon'ble Apex Court which follow the earlier decision of Sakiri Vasu(Supra) which holds that the remedy for non-registration of an FIR is merely statutory in nature and the involvement of the writ Court to implement Lalita Kumari (Supra) has been deprecated. In the recent decision of the Hon'ble Apex Court dated 4th May, 2026 in the case of Sujal Vishwas Attavar and another Vs. State of Maharashtra and others reported in 2026 INSC 442, it has been categorically held as under :-

"6. In the same vein, this Court has duly considered the question as to whether the remedy under Article 226 can be availed of if there exists inaction and/or nonaction by the police in registering the FIR relating to a cognizable offence. We may refer to few such pronouncements:

6.1 In Sakiri Vasu v. State of U.P.10, a co-ordinate Bench of this Court observed:

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not



registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. ...

... ..

25. ... we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy...

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police.

...

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

(emphasis supplied)

[See also: All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India¹¹; Aleque Padamsee v. Union



*of India*¹²; *M. Subramaniam v. S. Janaki*¹³; and *Anurag Bhatnagar v. State (NCT of Delhi)*¹⁴

6.2 Following the law laid in *Sakiri Vasu (supra)*, this Court in *Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage*¹⁵, observed as under:

“2. This Court has held in Sakiri Vasu v. State of U.P. [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907], that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under :

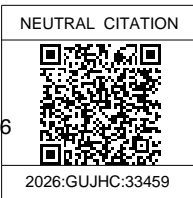
Section 156(3) CrPC. ... We have said this in Sakiri Vasu case [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440 : AIR 2008 SC 907] because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions.

Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

(emphasis supplied)

7. Keeping in view the above exposition of law, we find that the extraordinary jurisdiction under Article 226 of the Constitution of India ought not to have been invoked when alternative equally efficacious statutory remedies were available. If a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being conducted, then the remedy does not ordinarily lie in invoking the writ jurisdiction in the first instance, but in seeking recourse to the statutory framework, unless of course the urgency of the circumstances warrant otherwise.

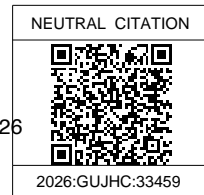


8. *The Bharatiya Nagarik Suraksha Sanhita 202316 (erstwhile Code of Criminal Procedure, 197317) provides a structured sequential mechanism for initiating criminal prosecution. The statutory framework contemplates that information relating to the commission of a cognizable offence is first placed before the officer-in-charge of the police station and an FIR is registered under Section 173(1) BNSS. In the event of refusal to register the FIR, recourse lies before the jurisdictional Superintendent of Police under Section 173(4) BNSS and, thereafter, before the Magistrate, under Section 175(3) BNSS.*

9. *In the present case, it is evident from the record that the complainant Company initially approached the Land Record Authority, by way of complaints dated 13.06.2025 and 09.07.2025, with copies thereof being sent to the police authority. However, it did not avail any of the statutory remedies provided under BNSS and instead directly invoked the writ jurisdiction of the High Court, inter alia, seeking directions for registration of FIR. In our considered view, such a recourse, in the first instance, is contrary to the settled principles of law. Particularly in the absence of imminent danger of violation of life or liberty of an individual. Article 226 is not a panacea for all grievances.*

10. *It is not the case of the complainant Company that it had approached the concerned Superintendent of Police or Magistrate prior to filing the writ petition, nor has any material been placed on record to show that such remedies were unavailable or inefficacious. Entertaining a writ petition, in the said circumstances, would in effect, result in the High Court, acting as a forum of first instance thereby bypassing the statutory scheme in its entirety. This is impermissible, save and except in special circumstances as mentioned in Radha Krishan Industries (supra), which are conspicuously absent in the present case.*

11. *The High Court is not bound to entertain a writ petition merely because a case of alleged inaction or negligence is made out against a statutory authority. Ordinarily, where a statute provides a complete and efficacious remedy, the same must be exhausted before invoking constitutional jurisdiction [See: Sakiri Vasu (supra) and Sudhir Bhaskarrao Tambe (supra)]. In the present facts, the complainant Company, has not exhausted the sequential statutory remedies available under BNSS. There is, therefore, no foundation to invoke the*



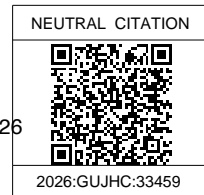
extraordinary jurisdiction of the High Court for the reason that efficacious and efficient alternative remedies exists. Hence, at this stage, we find the instant writ petition to be premature, and, therefore, not fit to be entertained.”

CONCLUSION :-

13. Lalita Kumari mandates the lodging of an FIR. But the remedy, if such FIR is not lodged, is not provided in Lalita Kumari. It is ironic that even if a Supreme Court mandate is violated by the authorities, various Benches of the Supreme Court, relying upon Sakiri Vasu (Supra), a decision of a smaller Bench prior to the Constitution Bench decision in Lalita Kumari(Supra), have said that the procedure laid down in the CrPC/BNSS has to be followed and the writ court should not be approached prior to that, solely because an alternative remedy exists in the statute.

13.1 Therefore, respectfully following the line of decisions of the Hon'ble Apex Court as tabulated in Attavar (Supra), the present petition has to be dismissed and is accordingly, dismissed.

13.2 Liberty is reserved to the parties to espouse such alternative remedies as may be available in accordance with



law. Any recourse to such remedy shall be considered on its own merits by the competent forum. Nothing contained in the present judgment shall be construed as an expression of an opinion on the merits of the case or as to whether or not, the facts discussed herein for the purposes of this decision, disclose the commission of any offence, cognizable or otherwise.

(D.N.RAY, J)

FURTHER ORDER

After the judgment was pronounced, it was requested on behalf of learned counsel for the petitioner that suitable directions for preservation of the CCTV footage, Station Diary entries, medical papers, call records and any other relevant documents/evidence may be directed to be preserved.

Upon this, learned Public Prosecutor Mr. Dave, upon instructions of ACP Mr. A. B. Valan, who is present in the Court, has placed the following statement, which reads as under, which is made part of the judgment :-

STATEMENT MADE BY ACP, "M' DIVISION, AHMEDABAD

"CCTV footages of Vejalpur Police Station installed at lockup Entry Gate and compound from date 18.05.2026 at 14:00 hours to 19.05.26 at 00:10 hours are already directed to be preserved vide letter dated 20.05.2026 with Javak No.2918/26 to the PI of the Vejalpur Police Station by ACP, 'M' Division, Ahmedabad and said CCTV footages are already seized by drawing panchnama dated 26.05.2026 during the



course of investigation of A.D.No.18 of 2026 by the ACP, 'M' Division, Ahmedabad.

It is stated that, all station diary entries and all medical papers from Civil Hospital, Sola, Civil Hospital, Asarwa and SVP Hospital, Ellisbridge are collected and made a part of investigation papers.

It is also stated that, CDR of deceased and alleged 3 police officers will be collected with a week from today of relevant period starting from 18.05.2026 to 19.05.2026 from the concerned Mobile operators"

Date : 29.05.2006
Place:Ahmedabad

(A.B.Valan)
ACP 'M' Division Police Station
Ahmedabad City

The handwritten original statement hereinabove is directed to be kept on record.

BINA SHAH

(D.N.RAY,J)